S.B. CIVIL SECOND APPEAL NO.188/2005

Arvind Kumar & Anr. vs. Smt. Anjana Dave & anr.

Date : 8.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. M Trivedi, for the appellants.

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Heard learned counsel for the appellants.

The appellants/defendants are aggrieved against the concurrent findings of fact recorded by the two courts below whereby the two courts below held that the portion of the property mentioned as MNOP in map Exhibit-1 is joint property and can be used as joint property. The defendants since have constructed a bathroom in this joint property without consent of the plaintiffs/respondents and it obstructed the plaintiffs' right to enjoy the property, therefore, the said bathroom is required to be removed. The trial court granted decree for mandatory and prohibitory injunction. The trial court's decree was upheld by the appellate court. Hence, this second appeal.

According to learned counsel for the appellants, the document in question was not properly proved and only a copy of the document summoned from the office of Gram Panchayat was produced on the basis of which the two courts below held that there is an admission of the defendants' ancestor about the property to remain joint and further to

remain open to sky. It is also submitted that the appellants came out with a case that their door is also opening in the said common space and that fact is wrong. Since the two courts below after appreciation of evidence – oral as well as documentary, decided the issue of fact with respect to the nature of the property, this Court, while exercising jurisdiction under Section 100 CPC, cannot interfere in that finding of fact as no case is made out for interference of this Court.

No substantial question of law is involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya